IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11234 of 2001
with
SPECIAL CIVIL APPLICATION No 11237 of 2001
with
CIVIL APPLICATION NO.647 OF 2002
IN
SPECIAL CIVIL APPLICATION No 11237 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

SHREE SANJELI VIBHAG KELVANI MANDAL
Versus
AMRISH M UPADHYAY OR HIS SUCCESSOR

Appearance:
1. Special Civil Application No. 11234 of 2001
MR TUSHAR MEHTA for Petitioner No. 1
Ms.Harsha Devani, AGP for Respondent No. 1,3,4
Mr.M.A.KKharadi for Respondent No. 2
2. Special Civil Application No. 11237 of 2001
MR TUSHAR MEHTA for Petitioner No. 1
Ms.Harsha Devani, AGP for Respondent No. 1 & 2
Mr.M.A.Kharadi for respondent Nos 3 to 14

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 28/06/2002

ORAL(common)JUDGEMENT

Draft amendment allowed.

2. Rule. Mr.M.A.Kharadi appears for respondent No.2 in SCA No.11234/01 and for respondent Nos 3 to 14 in SCA No.11237/01 and Ms.Harsha Devani, Ld.AGP appears for rest of the respondents in both matters and both waive service of rule on behalf of respective respondents. With the consent of parties both the matters are taken up for final hearing today. Since both these petitions are interconnected they are being dealt with by this common judgment.

3. Special Civil Application No.11234/01 is preferred by the petitioner against the order, dated 13.11.2001 passed by the Joint Charity Commissioner under section 41-A of the Bombay Public Trust Act, 1950 (hereinafter referred to as "the Act"). Special Civil Application No.11237/01 is preferred by the petitioner against the order dated 12.11.01 passed by the Joint Charity Commissioner under section 70 of the Act.

4. Mr.Tushar Mehta appearing for the petitioners submitted that the Joint Charity Commissioner could not have passed the order under section 41-A of the Act, in as much as, he submitted that until the final dispute is adjudicated upon the change report, by way of interim order, such a decision can not be given which results into seriously affecting the rights of the trustees for the purpose of managing the affairs of the trust. Mr.Mehta also submitted that the order is passed to the extent that those who are not the trustees of the trust are allowed to enroll new members of the trust. However, he submitted that pursuant to the order, dated 4.12.01 passed by this court those persons are restrained from enrolling as new members. Mr.Mehta further submitted that pending these petitions, on 14.4.02 a fresh meeting was held, and at the said meeting, the election of Board of Trustees is also held, and he submitted that the said proceedings are not the subject matter of dispute before this court, and therefore, he submitted that when the newly elected Board is already functioning, the order passed by the Charity Commissioner as an interim measure upon the change report under section 70 should be quashed and he submitted since now the newly elected body is there, in any case, same can not be made applicable qua the functioning of the newly elected body.

5. On behalf of the private respondents, Mr.Kharadi submitted that the orders passed by the Charity Commissioner are legal and valid and he submitted that those who are managing the affairs of the trust are not legitimately entitled to function and he further submitted that an advertisement has been issued for recruitment of staff and therefore if these persons are allowed to continue to function as trustees, the affairs of the trust would be adversely affected. Mr.Kharadi submitted that, as a matter of fact, the election which has been held on 14.4.02 is not a genuine one and he submitted that his clients have not received any communication or intimation regarding convening of the meeting.

6. After hearing, it was put to Mr.Mehta appearing on behalf of petitioners by the court as to whether the petitioners agree for holding fresh election of Board of Trustees under the supervision of some officer who may be deputed by the Charity Commissioner and in response thereto upon instructions from his client, Mr.Mehta stated that without prejudice to their rights to contend that the meeting dated 14.4.02 was genuinely held they have no objection in holding the meeting of the members of the trust for electing Board of trustees. Mr.Kharadi has also submitted that his clients have also no objection if the meeting is held for electing Board of Trustees under the supervision of a Govt.officer.

7. Considering the overall facts and circumstances of the case, I am of the view that the following directions would meet with the ends of justice:

(i) The petitioners shall convene a meeting of the members of the trust for electing Board of Trustees within a period of four weeks from today and shall also give specific intimation by Regd.A.D post to the members of the trust and also to the Charity Commissioner for the purpose of deputing some officer at the said meeting and intimation should be given to all concerned as per the record of membership of the trust as on 30.4.2002.

(ii) The Assistant Charity Commissioner, Godhra shall depute some officer for the purpose of supervising the proceedings of the meeting which will be held by the petitioners.

(iii) At such meeting election of the Board of Trustees shall be held under the supervision of the

officer deputed by the Assistant Charity Commissioner and the newly elected body at the said meeting shall be allowed to proceed with further recruitment process in accordance with law.

8. In view of the aforesaid directions, the orders passed by the Joint Charity Commissioner and the Charity Commissioner which are under challenge in these petitions would not survive. It is clarified that the newly elected body as indicated earlier shall only be allowed to function in accordance with law.

9. The recruitment process which has been undertaken pursuant to the advertisement at annexure "I" to the Civil Application No.647/02 in SCA No.11237/01 for the post of Peons and Sathi Sahayak etc shall remain stayed and the newly elected body as observed earlier shall be allowed to proceed with the recruitment after the election is over.

10. In view of the above, no further orders are required to be passed in these petitions. Rule in each petition is made absolute accordingly with no order as to costs. Civil Application No.647/02 in SCA No.11237/01 stands disposed of the order passed in main Special Civil Application.

28.6.02 (JAYANT PATEL,J)